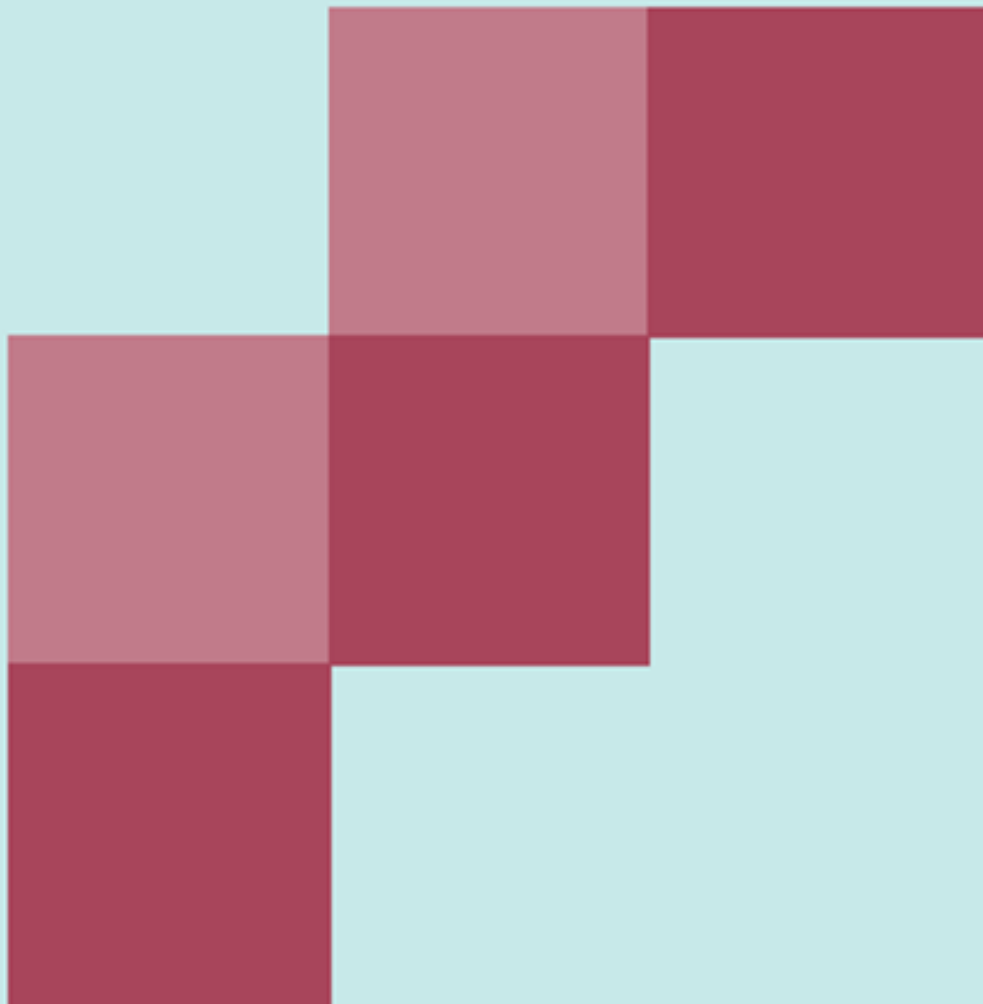


Monitoring Matrix on Enabling Environment for Civil Society Development

**Country Report:
Montenegro
2023**





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Country Report for Montenegro

**Center for Development of Non-Governmental Organizations
(CRNVO)**

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List of abbreviations

BCSDN	Balkan Civil Society Development Network
CSO	Civil Society Organization
CRNVO	Center for Development of Non-Governmental Organizations
EU	European Union
FATF	Financial Action Task Force
Law on NGOs	Law on Non-Governmental Organizations
LLC	Limited liability company
MM	Monitoring Matrix
NGO	Non-Governmental Organization
SLAPP	Strategic lawsuit against public participation
VAT	Value-added tax

Acknowledgment

The Centre for Development of Non-Governmental Organizations (CRNVO) would like to express appreciation to all those who provided the possibility to complete this report with precise data and information. First of all, we would like to thank representatives of 55 CSOs that participated in online questionnaire and provided their insights regarding their work in 2023.

In addition, we would like to thank representatives of media, volunteering organizations, informal groups and mechanisms for cooperation with CSOs, who participated in interviews related to their experience in the field they work in. Moreover, we would like to thank all institutions and authorities that provided answers and information asked through Free Access to Information. Without all of them, we wouldn't be able to complete this report and provide relevant data on civil society in Montenegro.

Finally, we express our deepest gratitude to BCSDN team members who enabled the preparation of this report and who contributed with their expertise and knowledge in creating this document.

We hope that this report will contribute to the analysis of the state of the civil sector in Montenegro and strengthen our fight for civil society!

Introduction

Centre for Development of Non-Governmental Organizations (CRNVO) and the Balkan Civil Society Development Network (BCSDN) are pleased to present the ninth edition of the Monitoring Matrix on Enabling Environment for Civil Society Development, covering developments in Montenegro in 2023.

This report is part of a series of country reports covering six countries in the Western Balkans: Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia. A Regional Report is also available summarizing findings and recommendations for all countries and an interactive web platform offering access to monitoring data per country at www.monitoringmatrix.net.

The Monitoring Matrix, developed in 2013 by BCSDN with support of its members and partners, presents the main principles and standards that have been identified as crucial to exist for the environment to be considered enabling for the operations of CSOs. The Matrix is organized around three areas, each divided by sub-areas:

- Basic Legal Guarantees of Freedoms;
- Framework for CSOs' Financial Viability and Sustainability;
- Government – CSO Relationship.

The comprehensive methodology is based on international standards and best regulatory practices at the European Union level and in European countries. The Matrix aims to define the optimum conditions for civil society to function and develop effectively. At the same time, it aims to define a realistic framework that can be followed and implemented by public authorities. Having in mind that the main challenges lay in implementation, over 150 indicators are set to monitor both the existing legal framework and its practical application.

The Monitoring Matrix operates on an annual reporting cycle which ensures a systematic and comparable evaluation across the region and across years, helping stakeholders track progress or regression, identify gaps and emerging trends, and prioritize reforms. The research conducted aims to provide for shadow reporting on the enabling environment for CSDev and to influence EU Enlargement policy and funding support for sustainable and strategic development of the sector.

Executive Summary

The report shows that CSOs face challenges that hinder their work. After multiple years of efforts, the working group for preparation of the new Law on NGOs has not delivered the draft yet, and the progress is unknown due to a lack of transparency in the process. The register of CSOs is functional and available online, with 7005 registered CSOs as of the end of 2023. However, the data available within is limited to a few main categories, lacking data such as: contact details, dominant area of work, funding received, number of employees and volunteers, etc. The data available is not in open format, lacking interoperability with other datasets which would enable easier analysis and monitoring of the main civil society development indicators.

Civil society enjoys considerable levels of freedom of expression, with sporadic and emerging threats coming, in some cases, from high government officials. Strategic lawsuits against public participation (SLAPPs) are present to a low extent, with multiple active cases. There is no systemic response to this threat, prompting CSOs and activists to rely on their own capacities.

Despite the legislation obliging ministries to conduct consultations in the beginning and final stages of policy making, this obligation is often neglected. Even though the Strategy for cooperation between State authorities and NGOs was adopted in 2022 for the period 2022-2026, the level of implementation of foreseen measures is low. Despite the opportunity for CSOs to participate in policy making and legislation drafting within working bodies, their interest in participation is low, to the extent that a part of working bodies was not able to form, such as the most important working body for cooperation: Council for cooperation between State administration and NGOs. The major cause for the lack of interest for working bodies comes from the interpretation of the Anti-corruption Law, equating CSO representatives in the working bodies with public officials, prompting reporting and administrative burdens.

There are minor tax incentives for CSOs, such as VAT exemption of EU funded projects, exemption from property and property sale tax, and tax incentives for donors. However, there is no concentrated effort on creating a favorable environment for philanthropy.

CSOs are funded majorly from abroad, primarily the EU. State funds are available, distributed by the line Ministries and Municipalities. The funds are planned a year in advance, but the calls for proposals are published late in the year, delaying the regular funding cycle. Complaints against the distribution of grants are abundant among civil society, accusing commissions and grantees of foul play. Besides the NGO funds distribution, CSOs also access other sources of funding to a smaller extent: direct transfers from the Government, tourism development grants, economic activity.

Although some CSOs use state-owned premises, there are no clear criteria prescribed for awarding premises. Legislation on economic activity of CSOs remains limiting.

The legislation on service provision remains vague and undefined, with multiple pieces of legislation governing this area. Services provided by CSOs are most often financed through NGO grants, often bringing uncertainty to the continuation of funding.

Civil Society Overview

	2022	2023
Number of registered organizations	6657 CSOs in total (6285 associations, 252 foundations and 120 foreign organization offices)	7005 CSOs in total (6618 associations, 266 foundations and 121 foreign organization offices)
Main civil society laws	Law on non-governmental organizations	Law on non-governmental organizations
Relevant changes in legal framework	No changes in the legal framework were adopted during 2022	No changes in the legal framework were adopted during 2023
State funding	Ministries in the government - 2.428.155,08 EUR	Ministries in the government - 2.968.216,71 EUR according to the budget, 4,673,246.75 EUR dedicated distribution
Human resources (employees and volunteers)	N/A	1590 employees
CSO-Government Cooperation (relevant body/ consultation mechanism)	Council for Cooperation of state administration and NGOs	Council for Cooperation of state administration and NGOs
Key challenges	<ul style="list-style-type: none"> • Non-functional Council for cooperation • Low level of implementation of the Strategy for cooperation • Fiscal environment, underdeveloped philanthropy and donations, lack of donor coordination, • Dysfunctional CSO register, • Low interest of CSOs in participation in government bodies. 	<ul style="list-style-type: none"> • Inability to form the Council for cooperation • Low level of implementation of the Strategy for cooperation, • Fiscal environment, underdeveloped philanthropy and donations, lack of donor coordination, • Low interest of CSOs in participation in government bodies, • Lack of clear SLAPP regulations.

Key findings

1	There is not enough official data on the diversity of the civil society.
2	Existing tax benefits do not encourage individual or corporate giving.
3	The environment for CSO participation in policymaking is discouraging for CSOs.
4	Service provision is not regulated by legislation.
5	The implementation of the Strategy for cooperation between state authorities and NGOs is on a low level.
6	The Council for cooperation between state authorities and NGOs is non-functional.
7	Law on NGOs is in the drafting phase for over two years.
8	The law does not provide early dismissal and protective mechanisms for SLAPP targets.

Key recommendations

1	The Government should implement the Strategy on cooperation between State authorities and NGOs to the full extent.
2	The working group for creation of the Law on NGOs should deliver the draft and include the wider public in the debate to deliver a high-quality document.
3	The register of NGOs should be made available in open data format, including more types of data gathered.
4	State funding for NGOs should include program funding and institutional grants.
5	Comprehensive law on CSOs providing services should be drafted and adopted.
6	Philanthropy should be encouraged through tax incentives for individuals and companies.
7	Council for cooperation between State authorities and NGOs should be reestablished and made functional.
8	Anti-SLAPP legislation should be introduced or incorporated into existing laws, providing protection and early dismissal of SLAPP cases.

Background I Country Overview

In 2023, Montenegro continued to face political instability, with a government in technical mandate following the 2022 vote of no confidence for Prime Minister Dritan Abazović and his government. After many trade-offs between the parties, a new government was formed in October 2023 by the new Prime Minister Miloško Spajić – head of Movement Europe Now, which holds the largest part of Parliament seats – 24 of 81.

The political situation has highlighted the differences between the parties, which leaned into the control of state resources according to political belonging. Considering the need of EU to rekindle the accession process and return momentum to the accession in the Western Balkans, the new government capitalized on the push for last-minute reforms to achieve the interim benchmark goals for Chapter 23 – Judiciary and fundamental rights. The push for reforms was artificial – laws were drafted, proposed, and adopted in a hurry, without a proper public consultation process, resulting in legislation that will have to be amended immediately.

When it comes specifically to the civil society situation, it remained mostly the same as the previous period. From the government officials there is a repeated rhetorical readiness for cooperation, but substantial and genuine involvement of civil society is still lacking. Public officials, such as the Prime Minister Dritan Abazović have verbally attacked and spoken out against CSOs critical of the government. Representatives of political parties which are now represented in the Government have been critical of CSOs who receive foreign funding, connecting them to foreign interests in Montenegro.

Findings

Area 1: Basic Legal Guarantees of Freedoms

1.1. Freedom of association

1.1.1 Freedom to establish and participate in CSOs

When it comes to freedom of association, it is guaranteed under Article 53 of the Constitution of Montenegro¹. The Article stipulates freedom of association, without the need for approval, with registration with competent authority. Informal groups are free to operate without the need for registration. Article 54 prohibits political association in state organs. It is not allowed for judges, state attorneys, Ombudsman, members of Central Bank Council, Council of State Audit Institution, Military, Police to be members of political associations. Article 55 clearly states that it is not allowed to form any kind of organization that is directed to the “violent demolishing of the constitutional order, violation of territorial integrity, human rights violation or promotion of national, racial, religious or any other type of hate”. It is also prohibited to form any kind of subversive organizations.

Association of citizens is regulated in the Law on Non-Governmental Organizations² along with three bylaws that further regulate this area. Drafting of the new Law has been started in 2022. The process is lacking in transparency, without any official data on the progress. The main concern among the civil society is related to the funding, with informal information that the guaranteed percentage from the state budget will be cut, along with the ability for NGOs to perform economic activities.

CSOs are required to register at the Ministry of Public Administration, as a non-governmental organization (NGO) in the form of either an association or foundation. In order to register an association, at least 3 founders are needed, and the registration is free of charge. An NGO can be established by at least three people, of which at least one has to be a citizen or resident of Montenegro, or by a legal entity. However, NGOs cannot be established by political parties or state bodies. Foundations can be established by one person regardless of their citizenship or place of residence. Organizations should be registered within 30 days from the day of submitting an

¹ The Constitution of Montenegro ("Official Gazette of Montenegro", no. 001/07 25.10.2007, 038/13 02.08.2013). Available at: <https://wapi.gov.me/download-preview/9f19ed1f-5b58-4232-9fb7-168f20cb3206?version=1.0>

² Law on Non-governmental Organizations ("Official Gazette of Montenegro ", no. 039/11 04.08.2011, 037/17 14.06.2017) Available at: <https://wapi.gov.me/download-preview/e0a79560-b887-4a20-9de3-c1cea8ec6548?version=1.0>

application. If a decision is not made in that period, the organization will be considered registered on the next working day after the deadline.

There are no data on the number of CSOs that were not registered within the legally prescribed time, as Ministry of Public Administration does not own such information. A total number of 7005 organizations were registered in Montenegro as of 31.12.2024. According to the information we gathered from the Ministry of Public Administration, 17 organisations were deleted from the register in the 2023, while there were no banned organizations, which is, anyway, not under the authority of this Ministry.

Based on the survey, one of two registered in 2023 reported that they had to send corrected documents twice in response to the Government's rejection of registration, compelling them to register for economic activity. This experience is in line with many other cases of registering CSOs, who report that the goals and activities outlined in their statute have been treated as economic activity. These activities include regular CSO activities which are not necessarily economic activity: training, education, organization of workshops, events, conferences, providing specialized services, etc. Also, some parts of the Law on NGOs were treated differently than before, prompting registering NGOs to define the mandate and recall of the organization's assembly in the Statute. This is a contradiction, considering that all members of the organization are automatically assembly members, and therefore, their mandate expiration or recall would mean dissolution of the organization. These refusals prolong the time of the registration without a real need. An important note is that the change in practice came without change in legislation.

In 2023 a total number of 328 networks, unions, clusters and coalitions were active. The Law on NGOs stipulates the same rules for these entities as for associations. No prior permission or registration is required, but is possible. Networking is one of the successful ways of joining resources, knowledge and capacities in order to achieve the same goal in Montenegro. Coalitions and networks are very often created within a project which can be an obstacle for sustainability after the project is completed.

83.64% of organisations that participated in the survey stated they are member of national or international network(s). CSOs in Montenegro are often a part of national and international networks, with the average number of networks per organization at 2.4. None of the organizations surveyed reported that they had to inform a state body on their intentions to join or form a network, but one organization stated that the process for registering a network was complicated.

1.1.2 State Interference

The legislation clearly prescribes powers and the limitations of powers of the Government towards the functioning of CSOs. However, there are occasions when the Government directly or indirectly interferes in the work of CSOs, which is done through close monitoring of CSOs, close monitoring of

CSOs' members, excessive audits, verbal attacks etc. Certain state officials and Parliament members were calling for more oversight among CSOs, alluding to their suspicious funding sources coming from the West.

According to the Law on Audits³, CSOs are subject to audit, inspections, evaluations, and similar types of control and monitoring, like companies and corporations. All CSOs are obliged to submit balance sheet and income statement to the Tax Administration during first quarter of the year for the last year.

Penal provisions are prescribed by the Law on Non-Governmental Organizations, but also by Criminal Law or any other law that applies to every legal entity. Sanctions stipulated by the Law on NGOs are proportionate to breaches made. They are monetary sanctions which are regulated as misdemeanors.

In a generally slow process, after the MONEYVAL visit in 2023, the Government of Montenegro rekindled the process of aligning the anti-money laundering and counter-terrorism financing regulations with FATF recommendations. In particular, an analysis of the FATF recommendation 8 and its implementation in Montenegro has been done, trying to draw a distinction between non-governmental organizations (as defined by the Law) and non-profit organizations (as per FATF definition). The risk assessment has been started, but final results are yet to come. There is common understanding about the (low) level of risk posed by CSOs for abuse of money laundering or financing terrorism, but it is yet to be included in policy. The policy definition would provide a sound methodology of determining the risks among NGOs, without the limitation of civic space and undue administrative burden on low-risk CSOs.

Inspection authority stated there were two measures conducted against CSOs during 2023. For the two violations found during these cases, a total of 600 EUR of fines and instructions to the organizations to correct the irregularities were given. The cases were the following violations: employer did not acquaint the employee with their rights and responsibilities regarding mobbing; and the employer did not pay the salary to the bank account of the employee. There were no appeals against these decisions. None of the organizations that participated in online survey answered that they were sanctioned due to breaching the Law.

Even though it is overdue to be adopted, the Law on NGOs is still in the drafting phase. This means that as before, CSOs are allowed to dissolve, according to the law on NGOs. An NGO will be removed from the register: when its set duration expires (within three days); by a decision to terminate or ban its work; or upon the completion of bankruptcy or voluntary liquidation procedures. A network is deleted from the register at the request of members of the association, if their number is reduced below the minimum number of founders prescribed by law, and the competent body of the association does not make a decision on admission of new members within one year.

³ Law on Audits, (Official gazette of Montenegro, 1/2017 od 9.1.2017) Available at: <https://wapi.gov.me/download-preview/e0d925eb-254e-41c5-927e-77232e15ff9c?version=1.0>

Based on answers from the online questionnaire, 7.27% of organisations experienced threats by government officials, while 1.81% responded that the government intruded into their internal work, whereas 3.63% said they experienced unannounced inspections and excessive oversight by the state authorities.

The most prominent case of labeling, intimidation and threats against CSOs in 2023 was the experience of critically oriented organizations by the government of Dritan Abazovic, who used public resources and media to diminish critical organizations. The participants of the survey also reported criminal charges filed by public officials against CSOs which were later dismissed as baseless. One participant of the survey reported intimidation by police officers during a protest.

1.1.3 Access to financial resources

CSOs in Montenegro are allowed to acquire financial resources from membership fees, voluntary contributions, gifts, donations, bequests, interest on deposits, dividends, rents, income from business activities and in any other way that is not contrary to the law. The Law on NGOs allows organizations to receive foreign donations (EU funds, embassies, foundations, etc.), as well as donations from individuals and companies. CSOs are also allowed to participate in public tenders for financing of their projects from state and local authorities and to raise funds from other legal persons such as commercial companies.

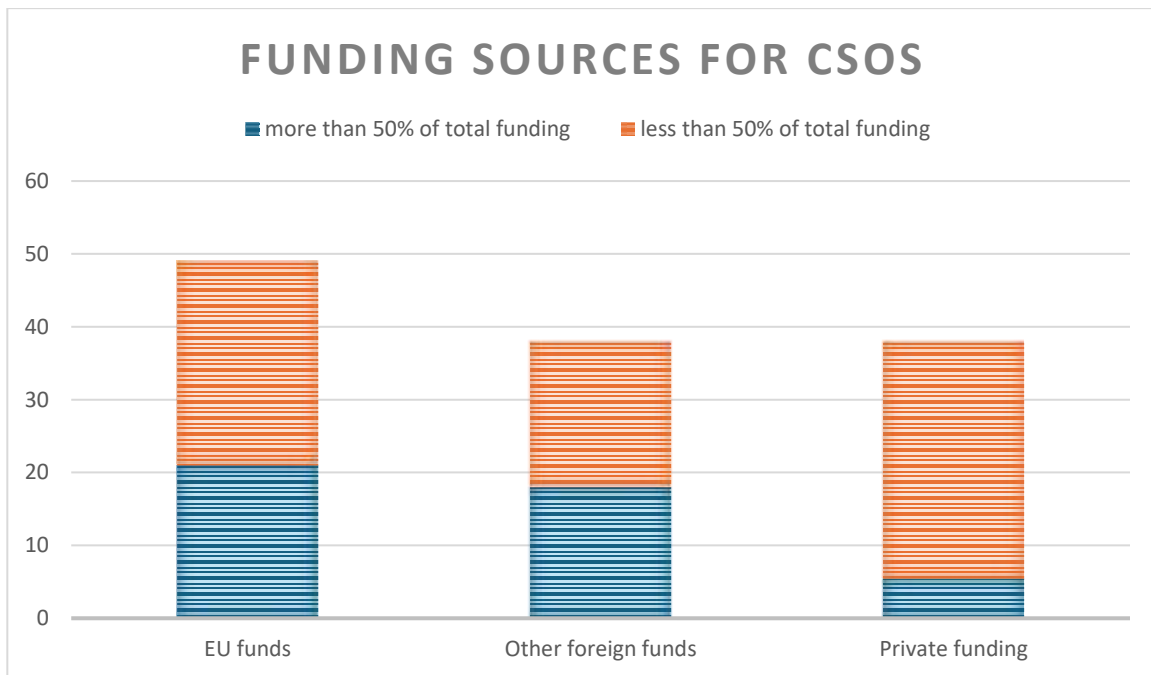
Non-governmental organizations, as all other legal entities, are obliged to register themselves at the Tax Authority. According to the Law on NGOs, they are allowed to participate in economic activities. In order to do so, they must register in the Central Register of Business Entities. CSO can generate income of up to 4.000 EUR, or not more than 20% of total annual income from previous year. The income from economic activity over the limit has to be paid in the full amount into the state budget.

The number of CSOs in Montenegro that exercise economic activities is 93, based on the official answer from the Tax Administration. The number contains all NGOs that submitted at least one of the following reports: personal income tax for employees, VAT, income tax or annual financial report (balance sheet). During 2023, eight organizations were registered for economic activities.

Based on online questionnaire responses, 5.45% of organisations do exercise economic activity, while one of them registered an LLC for the economic activity. Out of these organisations, one third reported they didn't have any obstacles in engaging in economic activities, two thirds reported complicated rules on reporting and control, and one third reported comprehensive administrative requests in order to engage in economic activities towards CSOs (for instance, licensing). On average, these organizations reported that economic activity made up 7.5% of their total income. The procedures for registering for economic activities are usually accompanied by other procedures, such as requests for licensing, which can be burdensome. One out of the five

organizations that performs economic activity reported comprehensive administrative requests in order to engage in economic activities towards CSOs (for instance, licensing), while other four organizations did not face any obstacles in this part.

Regarding the funding base, there are many different actors that provide funds for CSOs in Montenegro, and many organizations are very dependent of external funding. The largest donor in 2023 is the European Union. Based on the online questionnaire, 49% of organisations received funds from the EU. Out of that number, 21% responded the EU funding represents 50% or more of total yearly budget of their organization. In addition, 38% responded they receive other foreign funds (from embassies, foreign foundations, etc.). 18% of these organisations reported these funds are 50% or more of total yearly budget of the organization.



When it comes to restrictions when receiving foreign funds, 5.45% of organisations responded they had to register within the state in order to receive funds, while 18% of organisations stated that procedures for obtaining VAT are complicated. Central Bank of Montenegro stated that they do not possess information that any organization was forbidden from receiving foreign funds.

38% of organizations that participated in online survey reported they receive donations from private sources (corporations, individuals, etc.). Only 5.45% of the organizations stated that the donations from private sources made up more than 40% of their annual budget. None of these organizations stated they had any difficulties to access funding from these sources.

When it comes to paying fees to receive funds, 1.8% of CSOs reported they had to pay fees to the State in order to receive funds. On the other hand, 5.45% of

organizations said they had to pay bank fees, and the same percent reported administrative requirements by the state to access the funds.

1.2. Related freedoms

1.2.1 Freedom of Peaceful Assembly

The freedom of assembly is protected in the Constitution of Montenegro in Article 52. It guarantees freedom of peaceful assembly, without approval, with prior notification to competent authority. In the same article cases in which this right can be temporarily limited are listed. Those cases are prevention of disorder or crime, protection of health or moral, or for the safety of people and property, in accordance with the law.

This area is regulated by the Law on Public Assemblies and Public Performances adopted in 2016⁴. The Law defines public gatherings as “any peaceful gathering of more than 20 people outdoors to express political, social and other beliefs and goals, protests, interests and diversity”. In addition, the Law puts clear restrictions to hold an assembly closer than 15m from the Parliament, Presidential Building and Constitutional Court, or within 10m proximity to the Government building.

There were no amendments to this Law during 2023, so spontaneous assemblies remain recognized and allowed, while other assemblies must be reported to the authorities (Police Department) at least five days before they take place. The notification must contain the place and date of the gathering and the name of the responsible person. The police may temporarily restrict an assembly or make a decision not to allow a public meeting to be held if it is not timely and duly reported. The organizer may file a lawsuit to the Administrative Court of Montenegro, no later than 24 hours after receiving the decision.

Respondents of the online questionnaire who participated in public gatherings (76.4%) stated the following: none said that administrative procedure for organizers were complicated, 1.8% said that they faced restrictions on participating in public gatherings, while 8.7% stated that due to the restriction, participants were not able to gather at the agreed time. One of the participants in the survey noted that the police placed restrictions on the time and/or place of the gathering.

Respondents of the online questionnaire stated that they did attend various types of assembly. For instance, 23.6% responded they participated in simultaneous assemblies, while 1.8% reported they attended counter-assemblies. None of the CSOs were familiar with cases where the police banned the assembly due to the possibility of counter-protests. 12.7% of the participants noted that Police/state took measures to ensure that the gathering is peaceful and safe for all.

⁴ Law on public assemblies and public performances, Official Gazette of Montenegro, 052/16 09.08.2016). Available at: <https://www.katalogpropisa.me/propisi-crne-gore/zakon-o-javnim-okupljanjima-i-javnim-priredbama-2/>

Official response from Ombudsman was that there were no cases of reports of police failure to protect and ensure peaceful assembly recorded, whether by initiative of a physical or legal entity, or by official duty.

Media representatives who participated in interviews stated that they did not experience, nor know about media representatives who were not allowed to report safely and without interference on public assemblies.

1.2.2 Freedom of Expression

Freedom of expression is guaranteed by the Constitution of Montenegro in the Article 47 which states that everyone is entitled to freedom of expression by speech, written word, painting or other forms. It can only be limited if it infringes right on dignity, reputation or honor of another person, or if it endangers the public moral or security of Montenegro. Although freedom of expression can be limited if it is directed towards someone's dignity, reputation or honor, a person cannot be charged with libel, as it is not part of the Criminal Law as of 2011. Montenegrin legislation does not treat Strategic Lawsuits against public participation (SLAPPs) on any level, and hence, SLAPP cases cannot be identified neither through pre-trial nor through trial proceedings. SLAPPs are legal actions intended to censor, intimidate or silence critics under threat of legal costs and legal responsibility. These acts are usually perpetrated by persons connected to political power or economic wealth.

Ombudsman has recorded one case where a violation of the right to free expression connected to discrimination was found in 2023. It was filed by a natural person in their name and 406 other people, because of the cancellation of a book promotion. A recommendation was given, but it was not followed through.

16.3% of the surveyed organizations reported pressures for critical speech, with 3.63% reporting being sanctioned for it, while 10.9% reported pressures for activities targeting state policies.

A major case of pressure for using critical speech is the case of Boban Batrićević, who was sued for his critical writing about the Serb Orthodox Church. After major pressure against the lawsuit and the lack of transparency thereof, which included pressure from civil society, lawyers, writers, embassies, international organizations etc. the lawsuit was dropped. The early dismissal of the case was due to the case publicity and wide public support, not because of a working early-dismissal mechanism within the judiciary, as such a mechanism does not yet exist, despite EU recommendations and policies in this area.

Another SLAPP case is still ongoing, which had an environmental activist Ivana Čogurić fined and sued for performing a protest performance – placing collected waste in front of Communal Police building in Nikšić. Afterwards, her phone number was illegally given to the person whom she reported for unlawful disposal of waste by the Communal police chief.

In these two cases, considering the overwhelming support given to them, they did not self-censor. Self-censorship is rarely practiced according to the survey, as only 5.45% reported self-censoring. However, in the case of activist Denis Mekić, who was sued for endangering investors trying to build a small hydro-power plant, self-censorship was noted due to the lack of public support. In the case of Mekić, the Court's verdict was guilty, with a warning, which implies him bearing the legal costs.

1.2.3 Open, safe, and secure civic spaces

The Law on Electronic Communication⁵ regulates access to public communication services and the internet. Any individual or organization can use these services by signing a contract with an operator and agreeing to the terms. The operator may restrict or terminate access to its services if the subscriber has failed to meet the obligations or has breached contract terms. The provider must define in general terms the measures and the time limit within which these measures are implemented in the case of certain offenses, which must be commensurate with the violation committed and non-discriminatory. This regulation, while not limiting civic space, grants broad discretion to service providers, which introduces potential risks for misuse, particularly against those engaged in advocacy or critical speech.

A few CSOs reported that their channels of communication were blocked (9.09%). It was not specified what kind of restriction was applied, nor for how long communication means were blocked. One CSO reported that “report” mechanisms in social media were abused against their page, leading to their inability to post any links to their official website. None of the respondents in the survey stated that they were prosecuted for taking part in an online group.

Attacks and harassment of individuals and legal persons, which includes CSOs and their representatives, are prohibited by the Penal code of Montenegro⁶. This protection extends to the online space as well as offline. 14.54% of the respondents in the survey reported that they were threatened or harassed for

⁵ Law on electronic communication (Official Gazette of Montenegro, no. 40, 13.08.2013, 56/13, 2/17). Available at: <https://wapi.gov.me/download-preview/207dd619-58fc-4d2e-a033-e31642675807?version=1.0>

⁶ Penal Code of Montenegro (Official gazette of Montenegro, 40/2008, 25/2010, 32/2011, 64/2011, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015, 44/2017, 49/2018, 3/2020, 26/2021, 144/2021 i 145/2021 i 110/2023.) Available at: <https://wapi.gov.me/download-preview/c4dcee51-ee88-430f-a8db-de91f38eadc4?version=1.0>

their participation in online groups, and the same number reported feeling afraid for their own safety as a representative of a CSO.

Article 119 of the Law on Electronic Communication prescribes that it is forbidden to listen, eavesdrop or store the content and data of the communication, without the consent of the users of that communication, except when necessary for the purpose of transmitting the message (fax, e-mail, sms, voicemail etc.), or when there is legal authority to do so. However, operators are required to provide adequate hardware and software at their network to enable lawful interception of communications. There were no reported cases of unjustified monitoring or collecting of users' information.

The main legislation governing the protection of personal data is the Law on protection of personal data. The new draft law prepared in 2019 was set to harmonize it with the EU General Data Protection Regulation (GDPR). Due to government and parliament majority switches, the new law was not adopted. The legislation, as is, does not recognize many of the new and emerging threats, such as AI especially pertaining to personal data protection. There were no cases of constitutional complaints about the legislation pertaining to emerging technologies or their use in breach of fundamental rights.

Area 2: Framework for CSO Financial Viability and Sustainability

2.1. Tax/fiscal treatment for CSOs and their donors

2.1.1 Tax Benefits

When it comes to the tax system in Montenegro, the Rulebook on Tax Exemption Procedure⁷ has a couple of benefits for CSOs. The most important one from Article 13a regulates tax exemption of projects funded by the European Union. Exemption from VAT is realized on total contract amount, including European Union resources, as well as co-funding resources. However, the tax exemption is not applied on salaries and other human resources fees. Non-governmental organizations are also exempt from tax on real estate, which is in their ownership, if it is used for achieving the goals of organizations⁸. On the same ground they are exempt from tax on real estate turnover⁹.

The procedure for VAT exemption has undergone an overhaul in 2023. It was wholly operated by the EU Delegation to Montenegro, who passed the obligation to Ministry of foreign affairs. This period was marked with uncertainty and prolonged periods of waiting. Finally, the government passed the procedure to the Tax Authority, adopting a bylaw on this matter.

The Personal Income Tax Act¹⁰ provides that expenditure on all areas of public interest is recognized as an expenditure of up to 3% of total income. This definition is aligned with the definition of public interest as per the Law on NGOs.

None of CSOs reported they used tax benefits for economic activities. 1.8% of the respondents claimed that the administrative procedure for registering for economic activities is complex, as well as administrative requirements for accessing tax breaks. 3.63% of the respondents claimed that

⁷ Rulebook on Tax Exemption Procedure (Official Gazette of Montenegro, 044/24, 13.05.2024) Available at: <https://wapi.gov.me/download-preview/a6331eef-f775-41f6-a5d9-ddb5ddda2dd3?version=1.0>

⁸ Law on property tax (Official Gazette of Montenegro, 025/19 od 30.04.2019, 049/22 od 06.05.2022). Available at: https://www.ucg.ac.me/skladiste/blog_610329/objava_178540/failovi/Zakon%20o%20porezu%20na%20nepokretnosti.pdf

⁹ Law on real estate turnover tax (Official Gazette of Montenegro, 036/13 od 26.07.2013, 003/23 od 10.01.2023, 028/23 od 10.03.2023). Available at: <https://www.gov.me/dokumenta/bcb6b62f-3adf-4b58-82c4-47bb1e6cdcc6>

¹⁰ Personal income tax act (Official Gazette of Montenegro 14/2012, 6/2013, 62/2013, 60/2014, 79/2015, 83/2016, 67/2019, 59/2021, 146/2021, 152/2022.) Available at: <https://wapi.gov.me/download-preview/d708eddc-4101-4c20-b77a-90c176ff0a41?version=1.0>

reporting and oversight rules are complicated. 18.1% of the respondents reported difficult administrative procedures for VAT return.

The Law on Corporate Profit Tax states that NGOs don't pay tax on profits, if they are registered for economic activities, which is in line with the Law on NGOs which states that NGOs cannot make profit.

The Income Statement and Balance sheet, that every organization must submit at the first quarter of the year for the previous year, contains an overview of all income and expenses. There is no specific category that is named Passive investments, but there is a category "other income". None of the CSOs reported they utilize passive investments.

As of December 31st, 2023, there are 266 domestic endowments in Montenegro, which are registered as foundations. Out of 55 CSOs that participated in the online questionnaire, only 1.8% were foundations.

2.1.2 Incentives for giving

The area of individual and corporate giving has not been updated in 2023. However, in late 2021 amendments to the Law on Corporate profit tax¹¹ and Law on Personal income tax were adopted. The definition of public interest has been aligned with the provisions of the Law on NGOs (recognizing all 21 areas of public interest, instead of only 5 in previous legislation), specifying that benefits would be recognized as expenditures only if they were incurred in legal entities registered for performing activities in areas of public interest defined by the Law, in accordance with special regulations and stipulated that expenditures are recognized not only in money but also in things, rights and services.

The Law on Corporate Income Tax recognizes expenditures in the area of public interest up to 3,5% of the total income of the taxpayer, whereas the Law on Personal Income Tax recognizes the expenditures up to 3%. These laws do not explicitly regulate the issue of the tax status of the so-called institutional grants for NGOs operating in areas of public interest. It is therefore unclear whether the expenses of legal entities-taxpayers are recognized in the form of an institutional grant as an expense.

Although the legal framework does not provide incentives or tax benefits for companies, One, Telekom, Coca Cola Hellenic, Erste bank, and similar companies finance CSOs' projects by announcing calls in various fields: inclusive education, environment protection, digital transformation, etc. There are also CSOs that support grassroots and smaller organizations through re-granting schemes, such as: CRNVO, CGO, fAKT, CeMI, CZIP, etc.

¹¹ Law on corporate profit tax (Official Gazette of Montenegro, 040/08, 27.06.2008, 086/09, 25.12.2009, 040/11, 08.08.2011, 014/12, 07.03.2012, 061/13, 30.12.2013, 055/16, 17.08.2016, 146/21, 31.12.2021, 152/22 od 30.12.2022, 028/23, 10.03.2023, 125/23, 31.12.2023, 088/24, 13.09.2024) Available at: <https://wapi.gov.me/download-preview/5e2364b3-d03c-4ceb-aff-7069b05e4034?version=1.0>

The development of individual philanthropy is still at the low level in Montenegro and is mostly constrained by the lack of trust in Montenegrin society and the limited awareness of the importance of such activities.

2.2. State support

2.2.1 Public Funding Availability

A decentralized NGO project funding system is in place, providing funding through the ministries. Each year, ministries declare areas of public interest in their area of operation in which projects of CSOs will be financed during the next year. Although CSOs are invited to participate in consultations on sectoral analysis and provide comments and suggestions, that is not very common in practice. 8 ministries have conducted public consultations on sectoral analyses, with 12 NGOs giving input on them.

For each area of public interest, a three-member commission is formed, of which two members are state officials and one member is a representative of CSO, who is chosen based on a public call. Ministries are obliged to publish public calls for financing projects of CSOs by March 1st for projects that will be implemented in that year. In 2023, none of the calls were published before March 1st, and most of them were published late in the year.

Calls are open for one month. The Commissions conduct the technical check of the documents, while the projects themselves are evaluated by independent assessors, and the Commissions in each ministry make a final list on supported projects.

Government support to civil society is defined in the Law on Non-Governmental Organizations and amounts to minimum 0.3% of the annual current budget. Additionally, 0.1% of the annual current budget is allocated for programs and projects of non-governmental organizations in the area of protecting persons with disabilities and another 0.1% is given for co-funding of programs and projects funded from the European Union funds.

In 2023, 2.968.215,71 EUR were planned in the Budget line: Transfer to NGOs in the Budget of Montenegro, which is 22% more than in 2022. However, the amount allocated in 2023 was lower than the prescribed minimum, amounting to only 0.23% of the state budget.

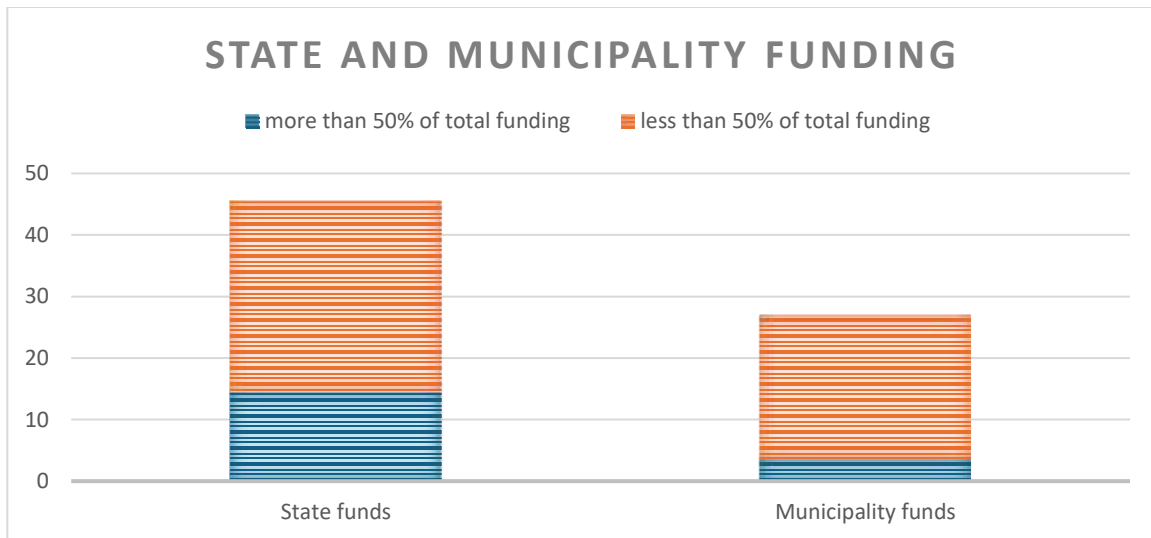
During 2023, 11 ministries announced 22 calls for financing NGO projects. Based on the decisions published, 284 projects were funded, including the co-funding of the EU-funded projects. A total of 4,673,246.75 EUR were distributed. The increase in funding of projects as opposed to the budget line amount is attributable to the transfers from budget reserve.

When it comes to co-funding of the EU funded projects in 2023, 1,270,000 EUR were planned in the budget, while 1,266,248.66 EUR were allocated. The call for co-financing is open throughout the year.

Outside of the funding dedicated to NGOs through the mechanism set up by the Law on NGOs, the Government directly gave 492,756 EUR as direct support, based on *de minimis* support regulations,

usually based on requests from organizations. The Ministry of Defense granted 10.000 EUR to an organization based on a request. Ministry of tourism, ecology, sustainable development and development of the north supported NGOs with grants for improving tourism in total of 104,700 EUR. Both NGOs and other legal entities could apply for these funds.

45.5% of respondents in the survey have stated that they received funding from the state level, whereas 27% of respondents received funding from local municipalities. For 14.5% of the respondents, state funding made up half or more of the budget, while for 3.6% municipal funding made up more than half of the budget.



2.2.2 Public Funding Distribution

In 2023, most public funding calls were late, with none of them published before March 1st, despite this being stipulated by the Law on NGOs.

All Ministries that announced calls respected the procedure stipulated by the Law on NGOs: the call contained the title, priority area, specific objectives, supporting documentation required, total budget of the call, the minimum and maximum amount that can be allocated, the deadline and the address for submitting project proposals.

After the deadline for submitting projects has passed, the administrative checklist is published and CSOs whose documentation is not complete have five working days to submit additional documents. After that, independent evaluators score projects, and the Commission determines the list of projects that will be funded based on the number of points they received. After the list of supported projects is determined, it is publicly announced on the ministry's website, along with the number of points that each project received. Operating with a limited budget per call, the Ministry can offer an applicant to implement the project with a lower budget, but not more than 20% of the project budget.

29% of the surveyed organizations stated they agree that state institutions respect the procedure for allocating funds, while 31% disagree.

The legal remedy for the Decisions on funding distribution for NGO projects is a lawsuit in front of the Administrative Court. The Administrative Court stated that there were 9 lawsuits filed in 2023 against the decisions on funding distribution, without giving details of the cases.

Moreover, most of the organizations that participated in the online survey stated they disagree that that Decisions on allocation of funds are fair, i.e. only 16% of the respondents claimed that the Decision on grants distribution was fair.

The funding system was analyzed in 2022, in preparation for the new Law on NGOs which should revise the system to improve the fairness of distribution and overall transparency.

During 2023, the debate on drafting the new Law on NGOs was deepened, as the decentralized model of funds allocation created many “catch-all” organizations that apply for projects in all areas and receive funds for those projects, while CSOs that operate in one specific area do not receive any funds. The main points in the discussions were how to ensure the independence of the evaluators and the necessity of NGO representatives in the Commission, as it only legitimizes their work, and it was the case that CSOs that supported candidacy of that representative in most cases received funds from that ministry.

2.2.3 Public Funding Accountability

The Law on NGOs stipulates that the intended use of the funds allocated to NGOs is controlled by external auditors, who are hired by the advisory body, i.e. the Council for Cooperation Between the Government and Non-Governmental Organizations. In addition, there are templates for conducting monitoring visits and evaluation of implemented projects. The monitoring of the project is performed by the Commissions.

Contracts between CSOs and ministries regulate the monitoring and evaluation of projects funded by the state. Periodic reports (quarterly, half-yearly) must be submitted to ministries, depending on the duration of the project, as well as the final narrative and financial report at the end of the project. Ministries occasionally conduct on-field monitoring visits to evaluate the implementation of the project they supported.

The Commission appointed by the Ministry can analyze finances and expenses at any time during the implementation of the project and two years after the project is completed. In addition, the Commission has the right to contact every physical or legal entity to check the credibility of all documentation. If the Commission determines that the funds are used non-purposefully, or that the project was not implemented on time, the CSO is obliged to repay all funds with interest calculation within 30 days after the Announcement on the Obligation of Returning Funds is received by the

organization. If the commission determines that the organization has not fulfilled its contractual obligations, it will be denied the right to apply for the project funding in the next two years.

It has become common practice that funding distribution is performed late in the year. Hence, most of the projects funded in 2022 were majorly implemented in 2023. Most of grant contracts for 2023 were signed in Q4 of 2023.

Based on official answers received from ministries, there were several monitoring visits in 2023, varying among the ministries. Even though there are forms and guidelines available publicly, some of the ministries reported that they do not have a prescribed monitoring form, while others responded that their M&E is done in line with the contract.

18% of organizations that participated in online questionnaires reported that their projects were subject to monitoring by the state. The organizations stated that the monitoring was done in line with pre-defined criteria and was announced in advance.

The periodic evaluation of the effect of project funding has not been done by any of the ministries for their areas. Ministry of public administration has performed an analysis of the funding system in 2022, in preparation for Strategy for cooperation between state authorities and NGOs and Law on NGO adoption, titled "Identified problems and possible solutions of budget funding of projects and programs of NGOs".

2.2.4 Non-Financial Support

The Law Governing the Use, Management and Disposal of State Property stipulates that the state may grant the use of state property to CSOs. In addition, each ministry may decide on providing any other type of non-financial support (organizing events, trainings, providing equipment, human resources, etc.).

Local Self-Governments may allocate property to CSOs based on published criteria. However, these criteria are mostly not clear, nor the allocation is conducted transparently. In 2023 there were cases reported in local municipalities where the local self-government provided premises or paid expenses for CSOs without a formal procedure.

The problem of an insufficient number of premises that the state or local governments may provide to CSOs is noticeable, especially since the premises that are available are usually not in shape for usage. There are many CSOs that provide services to vulnerable and marginalized groups and do not have their premises. Other non-financial support is not defined by any Law, but Ministries decide on it based on individual requests by CSOs.

Based on the answers from the Ministries, no non-financial support was given to CSOs. However, 11% of respondent CSOs reported that they received non-financial support by the state in 2023. There have not been any officially reported cases of CSOs being deprived of or not given non-financial support due to their political affiliation/critical stance.

2.3. Human capital

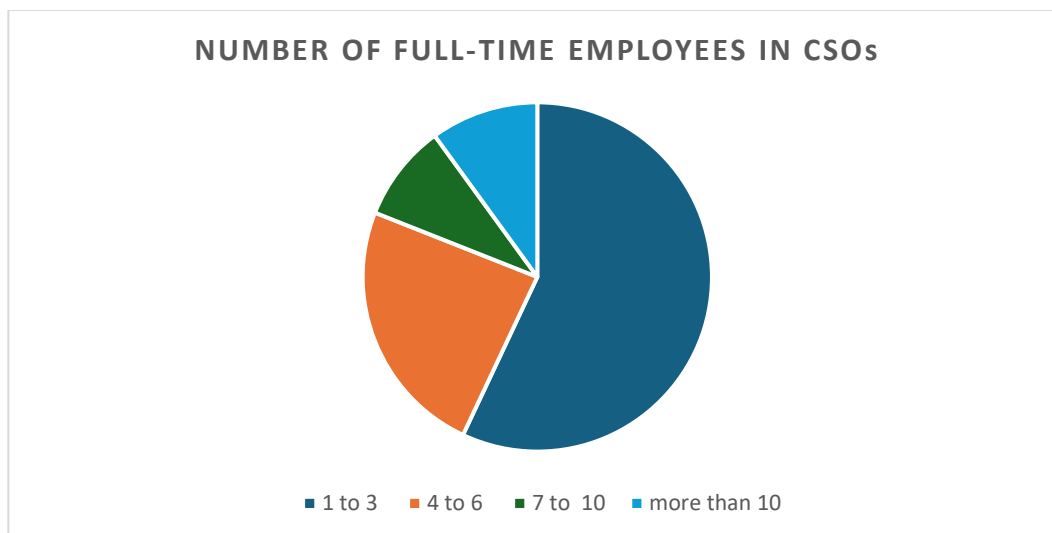
2.3.1 Employment in CSOs

The Labor Law¹² stipulates same treatment to employees in the CSO sector, corporations, companies and state bodies. This means that CSOs must pay full taxes and surtaxes for their employees, although CSOs are not obliged to have any employees according to the Law on NGOs, as opposed to companies, who must employ at least one person.

As there are no incentives for employees in the civil society sector, many organizations do not have them for this reason. Also, work from outside the employer's premises is recognized which is important for smaller organizations that do not have adequate facilities for their work, but it also allows remote work.

In 2023, CSOs in Montenegro engaged a total of 1590 employees, which is an increase of 9% compared with available data for 2020 (1458).

Two thirds of CSOs that participated in the online survey stated they have full-time employees – out of them, 57% have 1-3 full-time employees, 24% have 4-6 full-time employees, 9% have 7-10 employees and 10% have more than 10 full time employees. The average number of full-time employees among the respondents is 2.87. However, most CSOs also hired external consultants – 78%.



¹² Labour Law of Montenegro (Official Gazette Available at: 074/19, 30.12.2019, 008/21, 26.01.2021, 059/21, 04.06.2021) <https://www.gov.me/dokumenta/39fd6499-9069-48d0-a5ce-ecb04f1797ec>

There are some incentives for every employer, including CSOs, that employ person(s) with disabilities, which imply grants for adjusting the workplace and working conditions for their employment; credit facilities on favorable terms for the purchase of machinery, equipment and tools necessary for the employment of persons with disabilities; participation in financing the personal expenses of (work) assistants of persons with disabilities; and wage subsidies.

In addition, there is a vocational training program for persons with higher education, funded by the State, to hire graduates for a period of 9 months. There is a significant number of cases where new employees would sign a contract of employment after expiration of this period. Most smaller organizations do not have funds for salaries to keep interns after their program ends, so they ask for new graduates every year. During 2023, 166 graduates were employed in CSOs through the state-funded Vocational Training Program. Only one CSO reported that they used the public works support from the Employment office.

2.3.2 Volunteering in CSOs

The Law on voluntary work¹³ defines the area of volunteering. The amendments to this law were planned according to the 2022-2023 Action plan for implementation of the Strategy on cooperation between state authorities and NGOs 2022 – 2026¹⁴. The amendments are yet to be delivered. Youth Strategy 2023-2027¹⁵ foresees update of the Law on voluntary work within the Action plan for 2024. Along with them, the Action plan envisions establishing of a public registry of volunteers. The current Law requires the Employment office to have a registry, but it does not exist yet.

Youth Strategy 2023-2027, and the accompanying Action plan 2023-2024 foresees the implementation of measures which should strengthen volunteering, such as info days, promotions, volunteering programs in high schools, activities in the community etc.

This law defines voluntary work as unpaid and done in free will. It requires that volunteers and organizers of voluntary work must sign a contract. The law also states that volunteers have volunteer booklets which are issued by local administration, which is not respected in practice.

The Law prohibits volunteering to children under 15 years of age, even in cases when activities are organized by educational institutions or are in the function of education of those children. The Law is preventing the development of culture of

¹³ Law on volunteering work (Official Gazette of Montenegro 26/2010, 31/2010, 14/2012, 48/2015) Available at: <https://www.zzzcg.me/wp-content/uploads/2015/05/Zakon-o-volonterskom-radu.pdf>

¹⁴ Strategy for cooperation between state authorities and NGOs 2022-2026, Available at:

<https://wapi.gov.me/download-preview/cc6fef07-782f-4b78-8b15-fa851ccc3abf?version=1.0>

¹⁵ Youth Strategy of Montenegro 2023-2027, Available at: <https://www.gov.me/dokumenta/c27c88df-e903-422d-b789-379490c307cf>

volunteerism in that age group that would be a natural target group for the development of culture of volunteerism.

These provisions of the Law conflict with the practice of the Bureau for Education Services, that has optional and compulsory curricula materials for elementary and high school education, titled “Volunteer and humanitarian work”, which includes practical volunteering.

Volunteer work can take up to six hours a day and no more than 25 hours a week. If the contract on volunteer work is concluded in the case of vocational training, the volunteer work can last no longer than 40 hours per week. The agreement on volunteer work is concluded in writing between the volunteer and the volunteer organizer. The organizer of volunteer work is obliged to register the volunteer for insurance in case of injury or occupational disease during the volunteer work. However, even though the law stipulates these provisions, such cases are not very common in practice, and they have been criticized by CSOs that organize volunteer actions.

In the survey, one CSO reported that they have used a state program for support to volunteering. 52% of the respondents claimed that the administrative procedure for engaging volunteers was complicated, whereas 21% stated that it is easy. A smaller number of CSOs were instructed to register volunteers with the state - 7%, whereas 2.5% claim that they were sanctioned for not registering volunteers.

2.3.3 Civic Engagement

Law on Education of Adults¹⁶ recognizes CSOs as one of the key actors in providing informal education programs, defined as: training, retraining, further qualification, specialization and professional development; acquisition and improvement of key skills and key competences (foreign languages; Montenegrin language for foreigners, use of information and communication technologies; entrepreneurship, etc.); acquiring knowledge and skills for civil democracy, environmental protection, sustainable development, family life, successful social integration, raising the quality of life, health; education, social skills, third age, etc.

The importance and role of the CSOs is recognized in the Adult Education Strategy for Montenegro 2015-2025¹⁷, which states that in order to increase the social inclusion of adult citizens through lifelong learning and education, it is necessary to use the potential of the NGO sector in adult education for civil democracy, protection of life environment, sustainable development, energy efficiency, gender equality, media literacy, etc. Also, appreciating the role and contribution of non-governmental organizations in the development of institutional and non-institutional education,

¹⁶ Law on Education of Adults (Official Gazette of Montenegro 020/11, 15.04.2011, 047/17, 19.07.2017) Available at: <https://www.gov.me/dokumenta/439c7ed8-b8b6-4c79-9cbc-1988c42551e4>

¹⁷ Adult Education Strategy for Montenegro 2015-2025, Available at: <https://www.euprava.me/ResourceManager/FileDownload.aspx?rid=318&rType=2>

the Ministry of Education, in accordance with the Law on Non-Governmental Organizations, annually allocates funds for financing projects and programs of NGOs in these fields.

Until 2017 Civic Education was a mandatory subject in elementary schools and elective subject in high schools. However, the new Education Reform proposed that Civic Education should be an elective in elementary schools, as well. At universities, these topics are studied at faculties of law, political science, state and European studies, etc.

However, there are no such subjects in programs of STEM education faculties. The topic closest to the civil society that is planned to be introduced to schools is volunteering. It has been outlined as one of the priorities in the Youth Strategy 2023-2027, with volunteering programs planned to be introduced to high schools.

In practice, most of the organized non-formal education programs (schools, forums, workshops, trainings, etc.) are the ones that are accredited the least. For example, CSOs such as the Center for Civic Education, Prima, Active zone, Association of Youth with Disabilities, Prona, ADP ZID, Juventas, etc., organize many schools and trainings for youth and adults on different topics. CRNVO regularly organizes trainings on writing projects, civil society, strategic planning, public advocacy, etc., aimed for smaller and underdeveloped CSOs.

Area 3: State- CSO Relationship

3.1. Framework and practices for cooperation

3.1.1 Strategies for Development of and Cooperation with CSOs

The latest Strategy for cooperation between State authorities and NGOs 2022-2026 was adopted in 2022, along with the Action plan for 2022-2023. The 2022-2026 strategy is the fourth strategy adopted in this area, following the Strategy for cooperation between State authorities and NGOs 2009-2011, 2014-2016, and Strategy for improvement of the enabling environment for CSO work in Montenegro 2018-2020. The Strategy and Action plan contain exact goals, measures and activities to be undertaken, responsible authorities, and timeframes of completion (expressed in quarters). The Action plan for 2022-2023 has a prescribed budget of 1,281,000 EUR. The Strategy has two operative goals – improvement of the legal framework for long-term partnership with CSOs; and strengthening of CSO capacities to cooperate with the state in policymaking and service provision.

The Strategy 2022–2026 has been prepared by a working group which included two CSO representatives, including an external consultant with extensive experience in civil society. The Strategy was adopted after a public consultation process with three round tables geographically distributed for best coverage, presentations using sign language and Braille alphabet, online live stream of round tables, and three open-doors days, thus ensuring ample opportunities for wide participation. The Strategy was created based on solid statistical data and research, provided by various government agencies, such as the Tax Authority and Statistics office. The indicators are based on the statistical data which is to be collected through the regular work of the Government. However, for some of the indicators, the data was not gathered as planned, and therefore, the progress cannot be measured.

The Ministry of public administration prepares annual Action plans implementation reports. The overall level of implementation of the Strategy Action plans are low. The level of implementation of the Strategy, according to the reports from 2022 and 2023 are: half (3) activities partially completed, other half not completed for 2022; 20% completed, 21% partially completed, and 59% not completed for 2023.

Since the Action plan is for 2022-2023, and 2023 being the final year, the report reflects on the indicators as well. 25% of the indicators have a positive trend, 35% have an unchanged trend, 15% have a negative trend, and for 25% of the indicators the data is not available. The indicators and

activities are disaggregated by goals in the reports. Even though the Strategy itself has not been revised, the Action plans are adopted, and they are subject to public consultation process.

As far as the cooperation with state authorities goes, in practice, 37% of survey respondents stated that they did not try to cooperate with state authorities in policymaking, legislation drafting and joint implementation of activities. 13% stated that they tried to cooperate, but to no avail. 40.5% stated that they cooperated with state authorities from time to time, and 9.5% stated that they cooperated intensively during 2023. Some of the CSOs reported that their attempts to cooperate or participate in policy making were ignored, or outright sabotaged.

3.1.2 Mechanisms for Cooperation

The most important mechanism of collaboration between civil society and public institutions is Council for cooperation between state bodies and NGOs, first formed in 2018. It consists of the president – Minister of public administration, and 12 other members, 6 from institutions and same number from CSOs. Vice president of the Council is chosen from CSO representatives. Its main task is to follow cooperation between government and CSOs, especially in terms of the Strategy for cooperation between state authorities and NGOs in Montenegro 2022-2026, to foster cooperation and resolve issues and problems that occur in it. With formation of this Council, the Council for development of CSOs that existed since 2014, but whose work was not effective and didn't have major effects on the state of civil society or its cooperation with institutions, stopped existing.

Councils for cooperation exist on local level in some of the municipalities, depending on local legislation. The Law on local self-governance does not prescribe formation of such a body. All municipalities have in their acts obligation of at least one annual meeting between mayors and presidents of local parliaments with representatives of local CSOs, but in most cases this doesn't happen in practice.

The Council itself does not have a budget and its members are not paid. The administrative and technical tasks for the Council are done by Ministry of public administration employees. Besides the president of the Council, the Council is made up of: two representatives of the Ministry of public administration, one from Ministry of human and minority rights, one from labour and social care, one from Ministry of finance, and one from Ministry of European affairs. The representatives can be state secretaries or high managerial staff.

The Council itself is tasked with providing opinions on public policy, legislation and other documents of importance for developing cooperation between state authorities and NGOs. The details on the work and decision-making are defined in the Rules of procedure of the Council, which can include veto rules and other forms of control mechanisms. There is no current Rules of procedure due to the Council being out of mandate.

According to the Decision on the Council for cooperation between state authorities and NGOs, the president of the Council can invite representatives of at-risk groups of citizens to take part in the

work of the Council when discussing questions of importance for the said groups, functioning and development of their organizations.

Since 2022, however, the Council is not operational. From 2022 to 2023, Ministry of public administration published 6 calls for members – representatives of NGOs, repeatedly failing to attract the 6 needed members. This has been noted in the EC 2023 Report¹⁸. This situation is not only evident in the forming of the Council, but also with other working bodies, such as Operational team for Open Government Partnership.

The awareness of the CSOs about the work of the Council remains relatively low. Less than half of the survey respondents (44,7%) claimed that they are aware of the work of the Council. 67,3% of the respondents were acquainted with the Calls for representatives in the Council. Only 2,7% of the respondents applied for membership in the Council, whereas 16% took part in the process of election. 21% of the respondents rated the process of election of NGO representatives in the Council as transparent.

Among the reasons not to participate in the election process or to apply for membership in the Council, CSOs stated that they were either uninterested, did not believe in the functionality of the Council, did not have sufficient human and time resources, or consider there is lack of respect for CSO opinions in the Council.

¹⁸ European Commission report on Montenegro for 2023. Available at: https://neighbourhood-enlargement.ec.europa.eu/montenegro-report-2023_en

3.2. Involvement in policy and decision-making process

3.2.1 Standards for CSO Involvement

When it comes to inclusion of CSOs in decision making process, in legislative sense, most important act is Regulation on the election of CSO representatives to the working bodies of the state administration and the conduct of public debates in the preparation of laws and strategies¹⁹. This regulation was adopted in 2018, as planned by the Strategy on improving enabling environment for the work of CSOs in Montenegro 2018-2020. Regulation recognises two types of cooperation. Article 3 refers to the obligation of state administration organs to include representatives of non-governmental organisations into working bodies that they form, on the basis of public call on their web site and portal of e-administration. The second form of cooperation is through public debates in the preparations of laws and strategies. Interested public can participate in this debates during consultations in the process of drafting laws and in debates on the text of draft law.

The Regulation on the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies states that public debate in the preparation of laws and strategies is conducted by consulting bodies, organizations, associations and individuals in the initial phase of drafting the law or strategy; and by organizing a public debate on the text of the draft law or strategy.

The Ministry shall publish on its website and e-Government portal²⁰, within 15 days from the day of adoption of the annual work program, a list of laws and strategies for which it will organize a public debate in their preparation, a brief explanation of the need to adopt a law or strategy and other information from importance for their preparation. These rules exclude the defense sector and the state budget.

Furthermore, the Ministry must organize prior consultations, in the beginning phase of drafting the policy. The call should last at least 15 days. After producing a draft, the Ministry must conduct a public debate, which should last 20 to 40 days. The draft should be published with the public debate announcement. If a draft law is being debated, then RIA should be published with it. Calls for working body members, calls for prior consultation and calls for public debate are published on the e-government portal and government's website. When adopted, the laws, bylaws and local laws are published at the Official Gazette's website.

Neither the Regulation nor any other document stipulate that civil servants must undergo a training for conducting public consultations and debates. Besides legislation, the Strategy on cooperation between state authorities and NGOs 2022-2026 foresees the need for trainings for public servants for involvement of CSOs in policy making. Based on the answers from the Ministries, only 7 of Ministries' personnel were trained for involvement of CSOs in policy making. However, according to

¹⁹ Regulation on the election of CSO representatives to the working bodies of the state administration and the conduct of public debates in the preparation of laws and strategies, ("Official Gazette of Montenegro", br. 041/18, 28.06.2018) Available at: <https://www.gov.me/dokumenta/1f353a31-1729-4db3-a378-e8c4610a5b04>

²⁰ E-government portal: www.euprava.me

the Report on Implementation of the Strategy for cooperation between state authorities and NGOs (Action plan for 2023), only in 2023, 75 public servants were trained on involvement of CSOs in policy making.

In 2023, the Government adopted 32 laws, bylaws and strategies. Public consultations were held for 28 of them. 37 public calls for representatives of CSOs in working groups were published, including Commissions for grant distribution. The ministries, which are in charge of public policy, do not have designated officers for organizing public consultations, and it is done by staff of the respective Directorate, depending on the theme of public policy.

Consultations remain unused by the majority of CSOs. According to the survey, 43,6% of the respondents report that they took part in consultations. The CSOs that participate in consultations are generally not satisfied with the process and the outcome. Within the consultations, the respondents report an average 1.8 out of 4 ranking of consideration given to their inputs by the authorities, with 1 being not considered at all, and 4 totally considered. 27% of the respondents were included in the early stages of policy making, 42% were informed at least 7 days in advance, and 38% had sufficient time to prepare comments.

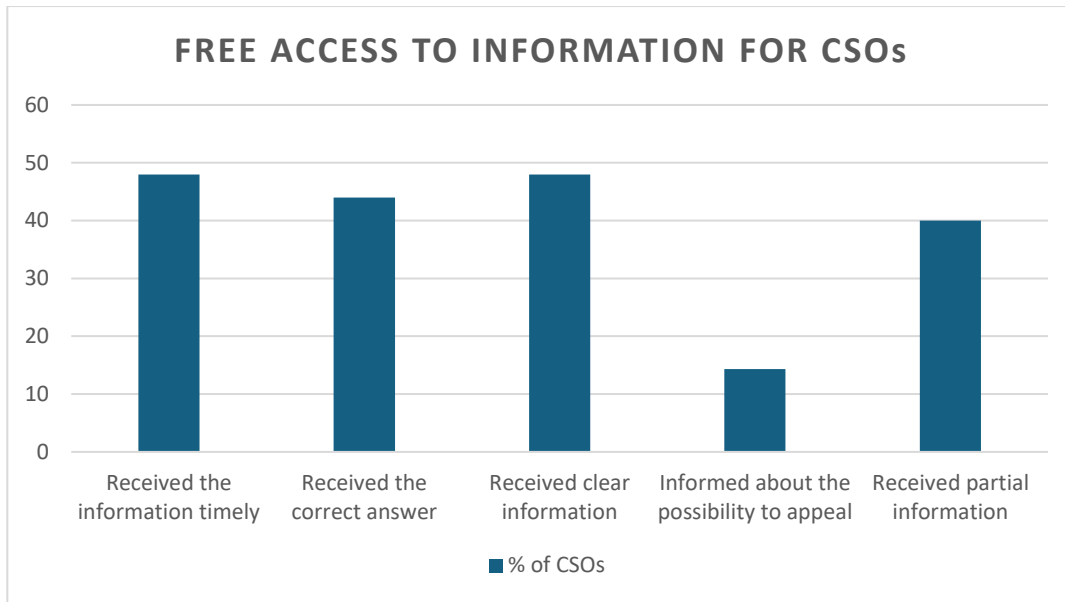
3.2.2 Access to Draft regulations

According to the Regulation On the Election of Representatives of Non-Governmental Organizations into the Working Bodies of the State Administration Bodies, each Ministry must publish on its website and e-Government portal a list of laws and strategies for which it will prepare a public debate, a brief explanation of the need to adopt a law or strategy and other information of importance for the preparation of the law or strategy, within 15 days from the day of adoption of the annual work program. The draft regulations must be published along with the call for participation in the consultation process.

The Law on Free Access to Information regulates that every domestic and foreign natural and legal person has the right to access information, without obligation to state the reasons and explain the interest of seeking information. Every national and local body and institution is obliged to have Guidelines for Access to Information on their websites. The institution must provide an answer for the requested information within 15 days of the day the request is received by the institution.

32,7% of the surveyed organizations reported requesting free access to information. Out of these organizations, 48% reported they received the requested information within the prescribed timeframe, 44% reported receiving an answer to the posed question, and 48% reported that the information received was clear or in a machine-readable format.

On the contrary, 11,5% of organizations received clear information on why the request was denied, while 22% didn't get any additional explanation of denial. 14.3% of organizations were informed about the possibility of appealing due to the denial of access to information. 40% of organizations stated that the information received was partially answering the posed question. In 2023, no fines were imposed based on the Law on free access to information.



3.2.3 Cross sector bodies

The Regulation on the election of CSO representatives to the working bodies of the state administration regulates the obligation of state organs to include representatives of non-governmental organisations into working and advisory bodies that they form, on the basis of public call on their web site and portal of e-administration. The Calls prescribe conditions for applying, which include experience in the given field.

When a Call is open, CSOs may propose a representative for that body. In addition, other organizations may support the election of that CSO representative by providing all the documents regulated in the criteria of the call. After the deadline passes, a list of suggested CSO representatives is announced, along with list of organizations that supported their application. Also, list of incomplete applications and list of organizations that supported the application of certain CSO representative whose documentation is incomplete is published. The representative with the most supporting organizations is chosen as a member.

There are no recorded cases of non-transparent selection of CSO representatives. However, in debates on funding distribution participants often complain that for the NGO representative in the Commissions a fixed group of CSOs is elected almost

exclusively. This occurrence points to the possibility of GONGO activity, with a goal to extract public funds.

According to the survey, 29,1% of organizations participated in in the work of advisory/consultative/ working group bodies and committees in the past year. Every working group, advisory body, consultative body, etc. that is formed and must have at least one CSO representative included in their work. One of the organizations reported that the barrier for their participation in a working body was the requirement not to be a public function holder, which is a broad definition as the law is interpreted.

Before and during 2023, some CSOs complained about the interpretation of the Anti-corruption Law²¹, which defined CSOs that are members of working bodies created by the state as public officials, prompting income and property reports, as well as legal limitations. This interpretation of the Law equalized government officials who held decision-making power with CSO representatives who most likely participated in the working group without compensation. This drove many CSOs out of the working bodies, leading to the inability of the government to fill CSO spaces.

Although CSOs often report not being able to freely express or have their opinion be taken seriously, none of the participants in online questionnaire nor interviews reported being subject to excessive state control due to their critical stances expressed in working bodies.

Advocacy is quite present in civil sector, but most organizations focus their advocacy on announcements, statements and media. Networks remain one of the most successful ways of joint advocacy. Also, many organisations use other means to promote their opinion: publishing reactions, announcements; signing petitions; protesting, etc. However, there is no official data on number of CSOs that use these alternative means and are representatives in working bodies. Several larger organizations have opted for alternative ways of advocacy, considering the working bodies as an ineffective way of advocating, which legitimizes the decisions made by the government.

²¹ Law on prevention of corruption (Official Gazette of Montenegro, 53/2014, 42/2017) Available at: <https://www.gov.me/dokumenta/0d38167d-9e9f-4f81-bc07-771ea612bf1e>

3.3. Collaboration in service provision

3.3.1 CSO Engagement in Service Provision and Contracting Procedures

The Law on Providing Services prescribes that the Government, Ministries, Local Self-Governments can provide services to citizens. However, ministries under whose jurisdiction is certain area of work, may issue a license to civil society organizations to provide services to citizens in that area. Further information on licensing is available under other laws. For instance, the Law on Child and Social Security²² prescribes that Ministry of Labor and Social Welfare may issue a license to CSO in this area that fulfills the following criteria: has been entered in the Register; meets the standards for the provision of the service for which it is licensed, in respect of: location, space, equipment, number and type of professional staff and program of service provision.

There is no division between CSOs and other providers of services in legislation. The differences pertain to the different natures of legal entities and ways of structuring. The standards that the provider should adhere to is same across the board.

The procedure for funding services depends according to the type of procedure used. For example, Law on social and children's welfare prescribes that the services can be funded through public procurement, public call, or public-private partnership. The Law on public procurement²³ states that the evaluation criteria can be price, price to quality ration, and life cycle cost. The quality parameter can include quality of the service, organization, qualification and experience of the provider. Funding of service in the most favourable procedure for NGOs – NGO funding in accordance with the Law on NGO - is still not appropriate for service provision due to many reasons: lack of dedicated funds for service provision, short project cycle, insistence on "innovation" for the sake of innovation, disruptions in the funding.

The distribution of funds for service provision is as fair as the category of funding it falls into. Generally, CSOs are critical of the project funding for CSOs and they label it as untransparent and corrupt. Same goes for the public procurement procedures.

There is no official data of number of contracts for service provision won by CSOs. Respondents of online survey didn't have much experience with providing services funded by state bodies. Namely,

²² Law on Child and Social Security (Official Gazette of Montenegro 027/13, 11.06.2013, 001/15, 05.01.2015, 042/15, 29.07.2015, 047/15, 18.08.2015, 056/16, 23.08.2016, 066/16, 20.10.2016, 001/17, 09.01.2017, 031/17, 12.05.2017, 042/17, 30.06.2017, 050/17, 31.07.2017, 059/21, 04.06.2021, 145/21, 31.12.2021, 145/21, 31.12.2021, 003/23, 10.01.2023) Available at: <https://wapi.gov.me/download-preview/b2a23e5e-e6eb-4a43-b1d4-1ffc603386?version=1.0>

²³ Law on public procurement (Official Gazette of Montenegro 074/19 od 30.12.2019, 003/23 od 10.01.2023, 011/23 od 27.01.2023.) Available at: <https://ujn.gov.me/zakon-o-javnim-nabavkama-sluzbeni-list-crne-gore-br-074-19-od-30-12-2019-003-23-od-10-01-2023-011-23-od-27-01-2023-preciscen-tekst/>

out of 10.9% organizations that applied to Calls for providing services, only 1.8% have won contracts.

Obligation to obtain license for service provision varies from ministry to ministry. For example, for protection of children, the license is issued by the Institute for Social and Child Protection for a period of six years and is renewed in accordance with this Law. If the competent state administration authority, during the period for which the activity license was issued, determines that the service provider does not meet the prescribed conditions, it will initiate the procedure for suspension of the license.

Furthermore, the Law on Consumer Protection²⁴ defines that organizations that work in the area of consumers' protection have the right to serve as service providers for citizens in this field. Namely, organizations may, among other, be financed by the state through the public call for financing legal entities in the field of consumers' protection. In addition, they have the authority to file a class action lawsuit.

Several CSOs have reported various issues pertaining to licensing for service provision. Some of the issues are: complicated procedure, long waiting periods from submitting documents to receiving licensing. The long wait periods can even disrupt the functioning of an organization, if the delay coincides with the funding cycle. Therefore, an organization that is waiting for licence extension is considered unlicensed, and therefore cannot apply for funding for service provision.

One CSO reported that the Municipality required them to be licensed in order to access funding, even though this was not prescribed neither by the Call, nor by national or local legislation.

3.3.2 Funding and M&E for CSO- Provides Services

According to the Law on public procurement, CSOs are able to receive funding through public procurement, if they are registered for performing economic activity in the Central register of economic subjects. If the funds are distributed through a call for CSOs, they are able to access the funding without registering for economic activity.

Funding of programs and projects is defined by the Law on NGOs, including for provision of services, as this area is not regulated by other legislation. Funding can be further defined through other laws. For instance, the Law on Consumer Protection defines that organisations that work in the area of consumers' protection have the right to serve as service providers for citizens in this field. Namely,

²⁴ Law on Consumer Protection (Official Gazette of Montenegro 70/2017.) Available at: <https://wapi.gov.me/download-preview/e34d11b5-d55d-45d2-bcd3-9640c3bae047?version=1.0>

organisations may, among other, be financed by the state through the public call for financing legal entities in the field of consumers' protection. If funded through an NGO project, the CSO runs into a risk of limited time of funding (usually up to a year), with the extension depending on the outcome of the next call for proposals.

Monitoring for services provided through projects funded through public calls for CSOs is performed under the rules that apply for all CSO projects, which includes the ability to monitor financial expenditures, organized events, visits to the premises with prior notification, all under the defined standards. Public procurement can be subject of inspection by the procurement inspection, in line with the Law on public procurement.

Conclusions and recommendations

In conclusion, 2023 was a challenging year for both the Government and CSOs, seeing as very little progress has been made on policy making, especially in the laws which are the most important for normal functioning of CSOs – Law on NGOs, Law on service provision, Law on voluntary work etc. Considering that in October the new government was formed, the focus in 2023 was on political dialogue, economic issues and chapter 23 reforms, which were fast-tracked due to promises of a positive IBAR – Interim benchmark assessment report for Chapter 23 – Judiciary and Fundamental rights, of EU accession negotiations.

Several recommendations emerge from the findings from the monitoring of the environment in which civil society in Montenegro operates, including the following:

- The Law on non-governmental organizations, which is in its drafting phase, should be completed by the working group. The public debate should be a wide, inclusive process in which the optimal form will be delivered. The Law should foresee the solutions to all problems recognized through practice: registration, all aspects of public funding, including eligibility, vertical and horizontal diversity, planning, long-term funding, institutional grants, data collection, transparency and control mechanisms, and other areas.
- Considering that the Strategy on cooperation between state authorities and non-governmental organizations 2022-2026 is a sound document based on previous research and needs of the civil society, its implementation should be at a higher level than in 2022 and 2023. Key activities, such as Law adoption, collection of data, enabling online NGO registration and funding of Resource centers should be implemented.
- Council for cooperation between state administration and non-governmental organizations should be re-established and empowered and would serve as a dialogue forum and control mechanism of the government. Its role in following up on Strategy implementation should be strengthened, as well as its role in enabling cooperation in other areas.
- The existing Register of NGOs should be provided in open data format, and cross-matched with other databases, to connect data on funding received, projects, implemented, contact details. The register should contain a sub-register of CSOs providing services.
- Service provision should be regulated by a comprehensive law which will create clear and precise criteria for issuing licenses for service providers. The law should dedicate annual funding for service provision by licensed CSOs.

- Philanthropy should be encouraged through tax incentives for individuals and legal persons. By expanding the current incentives, along with due oversight, the funding of CSOs will be able to expand ensuring their long-term sustainability.
- A comprehensive approach to SLAPPs should be made by legislative change, which will provide early identification, dismissal and support for SLAPP targets. The support should include legal and psychological support.

Annexes

Monitoring Matrix Framework and Methodology

The Monitoring Matrix on Enabling Environment for Civil Society Development is a detailed theoretical framework based on international human rights and freedoms and regulatory practices of European countries and the EU. The framework is built around three core areas: Basic Legal Guarantees of Freedoms; Framework for CSOs' Financial Viability and Sustainability; Government – CSO Relationship, each divided in sub-areas. The areas are elaborated by standards, which are further specified through legal and practice indicators. For each indicator there is a clear guidance on the data gathering strategy which should be utilized by country researchers, including publicly available data, FoI requests, survey, focus groups and interviews, as well as relevant secondary sources.

The Monitoring Matrix is a comprehensive methodology, developed in 2013 and last revised in 2023, designed to assess the environment for CSOs in the Western Balkans and Turkey against international standards. The Matrix operates on an annual reporting cycle which ensures a systematic and comparable evaluation across the region and across years, helping stakeholders track progress or regression, identify gaps and emerging trends, and prioritize reforms.

The research undertaken aims to provide evidence on the enabling environment for civil society development and to influence the support of governments, the European Union and other donors towards more sustainable and strategic development of the sector. On national level, MM findings have been feeding national strategies for cooperation with and development of the sector and have directly supported the drafting of key laws. On European level, the MM findings have been consistently used in the EC Country reports of the Enlargement Package, and as of 2024 in the Rule of Law Report.

Operationalization and Data collection

There are 3 areas, 8 sub-areas, 22 standards and 129 indicators defined in the monitoring methodology. The **legal indicators** are measured by coding the presence or absence of rules, costs, procedures and obligations enshrined in legal regulation (primary and secondary) and policy frameworks enacted in the respective countries. To assure standardization and comparability of the data gathering process regarding the **practice indicators**, country researchers follow a methodology plan in which each of the 80 indicators are further operationalized in concrete mandatory and additional data types (i.e. operationalized dimensions of a practice indicator) to be reported across the countries. The mandatory data types tap into the core building blocks of a

practice indicator as described in the Monitoring Matrix Toolkit. They mandate the reporting of optimal information without which one could not be able to evaluate the respective indicator. The additional data (operationalized dimensions) specified for each practice indicator are reported if country researchers want to deepen and further illustrate specific practice indicator (e.g. via case study; see next section on country-specific notes on methodology).

The data gathering strategy for the practice indicators is tailored to match the mandatory data types specified in the methodology plan. For each indicator there is a clear guidance on the data gathering strategy (instruments and sources) which should be utilized by country researchers. The specified data gathering instruments and sources follow an implicit hierarchy, in which publicly available factual data (e.g. official statistics) are the most important source of data for assessing practice indicators, followed by survey data from civil society organizations, which in turn is followed by relevant secondary sources (e.g. from CSOs reports, Ombudsman and media). Finally, at the end of the hierarchy are focus groups and interview data, being subjective type of data, which covers smaller groups of respondents.

The two core-data gathering instruments for data gathering for the Monitoring Matrix exercise are survey and freedom of information (FoI) requests. For most of the indicators, further triangulation through secondary sources (CSO and international reports, media content etc.) is recommended. In addition to these instruments, an adequate number of focus groups and expert interviews should be conducted, to deepen the analysis.

FoI requests should be extensively used when public information and statistics on the state of civil society and their environment (primary factual data) are not readily available. This practice in itself is a 'pressure' towards institutions to increase transparency and produce relevant information on the state of CSOs and their environment. The researchers can draw from a detailed bank of FoI questions tailored to match the operationalized practice indicators.

The **survey questionnaire** collects information on CSOs' experiences and perceptions on the key aspects of the enabling environment for civil society. The organisational survey includes 42 questions matching the mandatory data types (operationalized dimensions) on basic rights and freedoms, organisational and financial sustainability, and civil society's cooperation with the state. The questionnaire dominantly consists of closed questions, and fewer follow-up open questions which require the respondents to elaborate on their experience. The same questionnaire is implemented across all countries, and only the formulation of few items is slightly adapted to the concrete country context to assure questions are understood by respondents. The data collected from the survey is confidential and used strictly on anonymous basis. Individual responses are not connected to the organizations which answered the survey and reported only in an aggregate form.

The survey is sent to lists of formal CSOs compiled and updated by country researchers on the basis of available registers or other alternative lists of active CSOs in the country. For a successful survey which reflects the state of enabling environment in the country, the key aspect is creating a survey list which reflects the population of CSOs in the country. The list should be updated with new organizations on an annual level. If the researchers cannot update the list with organizations retrieved through official records, then they should map new actors in the policy process on local and national level. As per the sampling approach, using a mixed strategy of organizational-centered

sampling involving the use of ready-made organizational lists (if available by state and/ or voluntary registers) and a policy-centered sampling involving organizations which are active in policymaking across policy fields is recommended.

Focus groups will primarily serve to provide an in-depth insight into the experiences and perspectives of CSOs. The survey will help in identifying key issues to be addressed and deeper explored through focus groups. There should be 3-5 focus groups organized in each country, with 8-12 people per FG, preferably including the following types of CSOs: Non-formal/Non-registered actors including grass-root organizations, Decentralized/Small organizations and/or outside the capital operating CSOs, Service-providing CSOs, CSOs involved in cooperation/consultation processes, cross-sector bodies (although this will be covered also as a horizontal issue in the rest of the FGs), and Gender, youth and/or environment organizations (or other sectors where the survey shows increased challenges). Gender issues should be part of all focus groups as a cross-cutting theme. Focus groups will serve also to check the findings on the enabling environment gathered through the survey, bringing in cases from practice when it comes to basic legal guarantees of freedoms, framework for CSOs' financial viability and sustainability, and CSO-government cooperation framework.

Expert Interviews will serve to get a more detailed perspective of relevant stakeholders on specific parts of the enabling environment, collect information on useful secondary data, and also get their insight into the more general civil society situation. There should be 10-15 expert interviews conducted per country with the following stakeholders: CSOs or think-tanks dealing with enabling environment issues, Media associations or CSOs dealing with freedom of expression, CSOs with expertise on Tax/fiscal framework and practices, National level umbrella or representative body on issues such as volunteerism, (if applicable), and National banking association representative. The interviews will deepen the findings on enabling environment, and also help in identifying key challenges and needs of civil society. In addition to the guiding questions provided, researchers can formulate additional questions that capture contextual developments in the country.

Data analysis and interpretation

To analyse and interpret the data, country researchers use a unified data collection template which provides the indicators description (including the mandatory and additional data types for the practice indicators) and five category descriptions ranging from fully enabling to fully disabling environment provided under each indicator. The five category descriptions are specified for each legal and practice indicator in the Monitoring Matrix Toolkit, to enable researchers – based on the reported data – to choose one code (score) which most accurately summarizes the state of enabling environment concerning the respective indicator. In a first step, the researcher reports the required data types collected through different sources in the template box. For example, they report factual data from primary sources complemented with descriptive statistics or cross tabulations based on

survey data. In a second step, they choose one of five category descriptions specified for the respective indicator which best illustrates the reported data. The categories enable unified comparison of findings on the level of indicators across all country reports.

The system was created to address the need for 'compressed' and effective visual communication of findings and a systematic presentation of the changes in the enabling environment for CSDev in terms of standards across countries and years. It does not replace, but rather complements the qualitative assessment, as the narrative country reports are the basis on which categorization is conducted. In this context, the Monitoring Matrix online platform has also been updated and redesigned to be more user-friendly and assist in the achieving of the goals of the Monitoring Matrix, i.e. enable a more practical and efficient method for tracking the enabling environment for CSDev, as well as help in the drawing of comparisons between the countries in the region.